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1948.

File No. Money Lenders II/48
Legal Deptt.
B **BRANCH**

Subject:— Rules and Notifications under the Bombay Money Lenders Act 1946.

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Office of the M.L.A.

The draft notification at p. 223 as amended is in order.

2. Under section 22 of the Act it is not necessary to specify the areas in which any bank or unincorporate body exempted from the operation of sections 18 to 21 carries on its business.

Id/- P.M.L.
dt/- 29/3/

Remembrancer of Legal Affairs.

U.R. to R.D. No. 142 -Confl. dated the 30th March 1948.

V.VK.- 18/5/56/ 5C.

NOTIFICATION.

Revenue Department
Bombay Castle, 1

Bombay Money-lenders Act, 1946.

No. 3314/39 .- In exercise of the powers conferred by section 22 of the Bombay Money-lenders Act, 1946 (Bom. XXXI of 1946), the Government of Bombay is pleased to exempt the banks specified in the schedule hereto annexed, from the operation sections 13 to 21 of the said Act.

SCHEDULE.

1. The Prabhakar Bank, Ltd.
2. The United Western Bank, Ltd.
3. The Bank of Konkan, Ltd.
4. The Union Bank of Bijapur and Sholapur.
5. The Agricultural and Industrial Bank.

By order of the Governor of Bombay,

Secretary to Government.

VaVK. 18/5/56/

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The question raised in this case is what effective steps can be taken to prevent the employees of local authorities from engaging in money lending business. Section (1) of the Bombay Money Lenders Act, 1946, provides that one of the grounds on which the grant of a licence under this Act can be refused is that the applicant or any person responsible or proposed to be responsible for the management of the business as a money lender is disqualified from holding a licence. So far as the Bombay Money Lenders Act is concerned, the only provisions which provides for disqualification for holding a licence is section 16. It provides that a person whose licence is suspended or cancelled would be disqualified for holding a licence during the period of such suspension or cancellation. But section 8(1) does not say that the disqualification referred to therein must be under the provisions of the Bombay Money Lenders Act. If that was the intention of the Legislature, an express provisions to that effect would have been made in section 8 or the expression "disqualification" would have been defined in the Act. In the absence of any such provisions, it would not be proper to construe section 8(i) as being restricted to the disqualification mentioned in section 16. There may be provisions in other enactments or even instatutory rules or even under the general law which can be recognised as providing for disqualification on other grounds. Thus an alien enemy would under the general law be disqualified from carrying on money-lending business and would not be entitled to hold a licence.

2. So far as Government servants are concerned, the Bombay Civil Services, Conduct, Discipline and Appeal Rules contain provisions prohibiting a Government servant from engaging in a trade. Rule

21 of the said Rules provides that a Government servant may not without the previous sanction of Government engage in any trade or undertake any employment while on duty or on leave other than his public duty. This rule is wide enough to cover the case of money-lending and would prevent a Government servant from carrying on such business. Rule 12(1) contains, however, an express prohibition in the case of gazetted officers from lending money to any person possessing land within the local limits of their authority.

3. Rule 13 in Schedule M to the Bombay Primary Education Rules, 1924, contains a provision on the lines of rule 21 of the Bombay Civil Services Conduct, Discipline and Appeal Rules. The rule laid down that an officer or servant of School Board could not without the previous sanction of the School Board engage in any trade or undertake any employment other than his public duties. Rule 5 of the said Schedule laid down that an officer of a School Board could not lend money to any person possessing land within the local limits of ~~the area~~ the area for which the School Board had been constituted. It appears, however, that similar provisions have not been included in the draft Rules proposed to be made under the Bombay Primary Education Act, 1947. Under section 20(3) of the said Act the Provincial Government is empowered to fix the terms of employment of all thee members of the staff maintained by a District School Board and the primary school teachers by authorised municipalities, while under section 20(4) Government can prescribe their duties. It appears that under the combined provisions in the two clauses Government can make a rule providing that a primary school teacher maintained by an authorised municipality or any servant of a District School ~~Boards~~ Board shall divote the whole of his time to his duties as an employee of the local authority concerned and shall not carry on any trade or business including that of money lending.

V.VK. 18/8/56/ SC.

4. Under clause (c) of section 46 of the Bombay District Municipal Act, a district municipality can make rules generally for the guidance of its officers and servants in all matters relating to municipal administration, and under clause (e) of the said section, for determining the mode and conditions of appointing, punishing or dismissing an officer or servant. Clauses (d) and (f) of section 58 of the Municipal Boroughs Act, 1925 . , contain similar provisions which empower the borough municipalities to make rules prescribing the conditions of service of their officers and servants. Rules 5 and 13 of the model rules appended to the General Department circular No. 54233 dated 16th January 1935 contain provisions on the lines of rules 12(1) and 21 of the Bombay Civil Services, Conduct, Discipline and Appeal Rules.

5. Rules 11 and 19 of the Rules made by Government under section 133 of the Local Boards Act for regulating the appointment, control, punishment and dismissal officers and servants of local boards contain provisions on the lines of rules 12 and 21 of the Bombay Civil Services , Conduct, Discipline and Appeal Rules. Rule 18 of the draft Village Panchayat Secretaries Rules proposed to be made by Govt. under section 108 of the Bombay Village Panchayats Act also contains provisions on the lines of rule 21 of the Bombay Civil Service Rules .

6. Section 7 of the Money-Lenders Act provides for an application for a licence and requires that the application shall be made in such form and subject to such conditins as may be prescribed. Section 39 (2)(c) enables Government to lay down the form and conditions of a licence. So also clause (b) of sub-section(2) of section 39 provides for rules being made for the form of application for licences and further particulars to be

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inchhe included therein under section 6, it should therefor , be provided by means of rules that a person who applies for a licence under the Bombay Money-lenders Act shall state whether he is a full-time servant in the employment of government or of a local authority and if by rules applicable to him in that capacity he is debarred from carry ng on money lending business a statement to that effect in the application for a licence would enable the Registrar to hold that the applicant is disqualified from holding a licence.

dt/- 13/11/

Additional Secretary to Government.

H.F. to H.D. Nr. 10697 , dated the 15th November 1940.

V.W. 19/5/40/

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